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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PETRA RUSSELL,

11 Plaintiff,

12 v.

13 WADOT CAPITAL, INC., et al.,

14 Defendants.

CASE NO. C22-0531JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is Plaintiff Petra Russell's motion for authorization to serve
17 Defendants National Capital Partners, Inc. ("NCP") and Jared Ekdahl (together, the
18 "NCP Defendants") by mail. (Mot. (Dkt. # 51).) None of the Defendants who have
19 appeared in this action have opposed Ms. Russell's motion. (*See generally* Dkt.) The
20 court has reviewed Ms. Russell's motion, the documents filed in support of that motion,
21 the relevant portions of the record, and the governing law. Being fully advised, the court
22 DENIES Ms. Russell's motion for authorization to serve the NCP Defendants by mail.

II. BACKGROUND

Ms. Russell filed her original complaint in this matter in King County Superior Court on January 1, 2022, and amended her complaint on March 9, 2022. (Not. of Removal (Dkt. # 1) ¶ 1.) Defendant HMJOINT, LLC removed the case to this court on April 20, 2022. (*See generally* Not. of Removal.) On June 8, 2022, the court denied Ms. Russell’s motion to remand (6/8/22 Order (Dkt. # 17)) and the parties proceeded to litigate the matter in this court (*see generally* Dkt.).

On October 26, 2022, Ms. Russell filed a second amended complaint in which she added the NCP Defendants as Defendants. (2d Am. Compl. (Dkt. # 31); 10/25/22 Order (Dkt. # 30) (granting leave to amend).) On May 10, 2023—six-and-a-half months after Ms. Russell added the NCP Defendants to this case—the court ordered Ms. Russell to show cause why her claims against the NCP Defendants should not be dismissed for failure to serve the NCP Defendants with a summons and a copy of her second amended complaint within the 90-day timeframe provided in Federal Rule of Civil Procedure 4(m). (5/10/23 Order (Dkt. # 48) (quoting Fed. R. Civ. P. 4(m)).) The court warned that absent a showing of good cause for her failure to comply with Rule 4(m), the court would dismiss Ms. Russell’s claims against the NCP Defendants without prejudice. (*Id.* at 2.)

Ms. Russell timely responded to the order to show cause on May 17, 2023. (OSC Resp. (Dkt. # 50).) She asked the court to extend the time for her to serve the NCP Defendants and filed the instant motion for authorization to serve the NCP Defendants by mail. (*Id.*; Mot.) In her response, she states that she has “acted diligently in trying to effectuate service of process on the NCP Defendants” and asserts her belief that the NCP

1 Defendants “have, directly or indirectly, evaded service of process.” (OSC Resp. at 4;
2 *see also* Mot. at 2-4 (describing Ms. Russell’s efforts to serve the NCP Defendants).)

3 Ms. Russell’s evidence of her own diligence and of the NCP Defendants’ alleged
4 evasion of service, however, is sparse. On November 21, 2022, Ms. Russell’s process
5 server unsuccessfully attempted to serve the NCP Defendants at the address listed for
6 NCP on the Washington Secretary of State’s website. (5/17/23 Davidovskiy Decl. (Dkt.
7 # 50-1) ¶ 3; 4/21/23 Davidovskiy Decl. (Dkt. # 45) ¶ 3, Ex. 2 (process server’s
8 declarations of non-service on the NCP Defendants on November 21, 2022).) The NCP
9 Defendants did not appear on the building directory at that address, and the individual at
10 the security desk was unwilling to help the process server locate the NCP Defendants.
11 (4/21/23 Davidovskiy Decl., Ex. 2.) Ms. Russell asserts that she has since engaged “at
12 least two private investigators” in an effort to locate the NCP Defendants. (5/17/23
13 Davidovskiy Decl. ¶ 9.) Their investigation identified an address “with a last known
14 association to” Mr. Ekdahl earlier this year. (*Id.* ¶ 5.) On April 25, 2023, Ms. Russell’s
15 process server unsuccessfully attempted to serve the NCP Defendants at that address.
16 (*Id.*, Ex. 1 (process server’s declaration of non-service on April 25, 2023).) The current
17 resident at that address told the process server that the NCP Defendants were “unknown
18 to them” and were not living at that address. (*Id.*) The process server observed a vehicle
19 with license plate number BOS2518 at the residence, but Ms. Russell does not explain
20 whether that license plate number is significant. (*Id.*; *see generally* 5/17/23 Davidovskiy
21 Decl.) The investigation found that Mr. Ekdahl “appears to own a 2005 Audi A4” that
22 “appears to place him at” NCP’s business address, but Ms. Russell does not state whether

1 that vehicle provided any other leads regarding Mr. Ekdahl's location. (*Id.* ¶ 6.) The
2 investigation also identified telephone numbers that appear to be associated with Mr.
3 Ekdahl, but calls placed to those numbers were not answered. (*Id.* ¶ 7.) Ms. Russell's
4 private investigator believes that Mr. Ekdahl is using a "burner phone" that cannot be
5 traced, but Ms. Russell does not explain how her investigator came to that conclusion.
6 (*Id.*) Finally, the investigation found a post office box that appears to be associated with
7 Mr. Ekdahl (although counsel's declaration does not explain that association) and the
8 private investigator has not found a change of address on file for Mr. Ekdahl. (*Id.* ¶ 8.)

9 III. ANALYSIS

10 Federal Rule of Civil Procedure 4 provides that a plaintiff may, among other
11 methods, serve a defendant by "following state law for serving a summons in an action
12 brought in courts of general jurisdiction in the state where the district court is located or
13 where service is made." Fed. R. Civ. P. 4(e)(1). In Washington, service by mail is
14 permissible if the plaintiff demonstrates that (1) they made reasonably diligent efforts to
15 personally serve the defendants; (2) service by publication would be justified under
16 Washington law; and (3) the defendants are as likely to receive actual notice from service
17 by mail as they would from service by publication. *Dodo Int'l, Inc. v. Parker*, No.
18 C20-1116JCC, 2021 WL 662344, at *1 (W.D. Wash. Feb. 19, 2021) (citing Wash. Sup.
19 Ct. Civ. R. 4(d)(4) and *Charboneau Excavating, Inc. v. Turnipseed*, 75 P.3d 1011, 1014
20 (Wash. Ct. App. 2003)); *see also* RCW 4.28.080(17) (allowing substituted service only
21 after plaintiff has attempted, "with reasonable diligence," to personally serve the
22 individual or entity). The court concludes that the facts set forth in Ms. Russell's motion

1 and her attorney's declarations are insufficient to justify an order authorizing service on
2 the NCP Defendants by mail.

3 First, the court is not satisfied that Ms. Russell has exercised reasonable diligence
4 in attempting to locate and serve the NCP Defendants. To demonstrate reasonably
5 diligent efforts, the plaintiff must make "honest and reasonable efforts to locate the
6 defendant." *Pascua v. Heil*, 108 P.3d 1253, 1258 (Wash. Ct. App. 2005) (quoting *Martin*
7 *v. Meier*, 760 P.2d 925, 930 (Wash. 1988)). "While reasonable diligence does not require
8 the plaintiff to employ all conceivable means to locate the defendant, it does require the
9 plaintiff to follow up on any information possessed that might reasonably assist in
10 determining the defendant's whereabouts." *Id.* (citing *Carson v. Northstar Dev. Co.*, 814
11 P.2d 217, 221 (Wash. Ct. App. 1991)).

12 Here, Ms. Russell's process server only attempted service twice: once in
13 November 2022 to the address listed on the Washington Secretary of State's website, and
14 again in April 2023 to an address that had "a last known association to" Mr. Ekdahl
15 earlier this year. (5/17/23 Davidovskiy Decl. ¶¶ 3-5.) Although Ms. Russell's attorney
16 mentions an "ongoing investigation," he does not describe the specific efforts that he and
17 Ms. Russell's private investigators have made to identify the NCP Defendants' current
18 whereabouts. For example, nothing in his declarations describes the databases that that
19 the investigators searched, the leads they followed, or whether they have reached out to
20 associates of Mr. Ekdahl to inquire about his whereabouts. *See, e.g., Dobbins v.*
21 *Mendoza*, 947 P.2d 1229, 1234-35 (Wash. Ct. App. 1997) (finding plaintiff's affidavits
22 insufficient where witnesses stated they used "various sources" to find defendant but did

1 not identify what records they checked and holding that due diligence would require, “at
2 a minimum,” that the plaintiff review tax records to identify defendant’s names and
3 address and attempt personal service on them there); *Charboneau Excavating, Inc.*, 75
4 P.3d at 1014 (finding plaintiff had not exercised reasonable diligence where it did not
5 check assessor’s records, did not contact known associates of defendant, and did not
6 follow up on leads). Absent additional details of Ms. Russell’s investigation—preferably
7 provided through the declarations of the private investigators themselves—the court
8 cannot find that Ms. Russell has been reasonably diligent in attempting to locate and
9 serve the NCP Defendants over the past seven months.

10 Second, Ms. Russell has not demonstrated that service on the NCP Defendants by
11 publication would be justified. Washington allows service by publication in limited
12 circumstances, including, in relevant part, when a Washington resident “keeps himself or
13 herself concealed” within the state with the intent to “avoid the service of a summons”
14 and when the action is against a corporation “and the proper officers on whom to make
15 service do not exist or cannot be found.” *Dodo Int’l*, 2021 WL 662344, at *1 (quoting
16 RCW 4.28.100(2), (8)).

17 Ms. Russell has not provided the court with evidence that suggests that Mr. Ekdahl
18 is aware of this lawsuit and evading service. In *Pascua v. Heil*, for example, the
19 Washington Court of Appeals held that the plaintiff failed to demonstrate evasion of
20 service where the evidence showed that the defendant had changed addresses and phone
21 numbers in the three years since the accident, did not provide a forwarding telephone
22 number and address, and had an unlisted telephone number. *Pascua*, 108 P.3d at

1 1259-60. Here, Ms. Russell’s evidence shows only that, since her last interaction with
2 Mr. Ekdahl in June 2020 (*see* 2d Am. Compl. ¶ 5.52), NCP cannot be found at its former
3 business address, Mr. Ekdahl does not live at an address having “a last known association
4 to” him earlier this year, and Mr. Ekdahl has not answered calls to telephone numbers
5 that may or may not be his (*see generally* 5/17/23 Davidovskiy Decl.). As in *Pascua*, this
6 evidence, without more, does not raise an inference that Mr. Ekdahl is attempting to
7 avoid service of process. *Compare Pascua*, 108 P.3d at 1259-60, with *Dodo Int’l, Inc.*,
8 2021 WL 662344, at *2 (finding evidence sufficient to demonstrate evasion of service
9 where plaintiff’s process service made six attempts to serve defendant at his last known
10 address and where, during some of those attempts, vehicles registered to the defendant
11 were present and somebody was inside the residence, but no one answered the door).

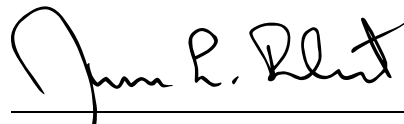
12 Finally, Ms. Russell has not made any effort in her supporting declarations to
13 show that service on the NCP Defendants by mail “is just as likely to give actual notice
14 as service by publication.” Wash. Sup. Ct. Civ. R. 4(d)(4). To the contrary, Ms. Russell
15 has shown only that the NCP Defendants’ business address is no longer active; that Mr.
16 Ekdahl does not reside at a certain residential address; and that Mr. Ekdahl might be
17 associated with a post office box. More information is needed before the court can find
18 that service by mail is reasonably likely to give Mr. Ekdahl notice of this lawsuit. *See*
19 *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (holding that due
20 process requires the method of service to be “reasonably calculated, under all the
21 circumstances, to apprise interested parties of the pendency of the action and afford them
22 an opportunity to present their objections”).

1 In sum, Ms. Russell has not demonstrated that she made reasonably diligent efforts
2 to personally serve the NCP Defendants, that service by publication would be justified
3 under Washington law under the circumstances presented here, and that the NCP
4 Defendants are as likely to receive actual notice from service by mail as they would from
5 service by publication. Therefore, the court DENIES Ms. Russell's motion for
6 authorization to serve the NCP Defendants by mail. This denial is without prejudice to
7 Ms. Russell renewing her motion, by no later than **June 29, 2023**,¹ with supporting
8 evidence that satisfies Washington's requirements for service by mail.

9 IV. CONCLUSION

10 For the foregoing reasons, the court DENIES Ms. Russell's motion for leave to
11 serve the NCP Defendants by mail (Dkt. # 51) without prejudice. Ms. Russell may file a
12 renewed motion that addresses the deficiencies identified in this order by no later than
13 **June 29, 2023**. If Ms. Russell does not make a timely filing in accordance with this
14 order, the court will dismiss her claims against the NCP Defendants without prejudice.

15 Dated this 1st day of June, 2023.

16 
17 _____
18 JAMES L. ROBART
19 United States District Judge
20

21 _____
22 ¹ The court notes that June 29, 2023 is more than eight months after Ms. Russell filed her
second amended complaint and thus represents a five-month extension of Rule 4(m)'s 90-day
deadline for effectuating service of process. *See* Fed. R. Civ. P. 4(m).